HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL No. 396 OF 2006

-

-

Between:5`

Lotus Gaganvihar Welfare Association,

Rep. by A. Madhusudhana Rao,

S/o late A. Purushottama Rao,

D.No.1-2-593/59, Gosha Mahal, Hyderabad

……Appellant

And

The Municipal Corporation of Hyderabad,

Rep. by its Commissioner, Hyderabad Circle

and another

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri D. Kodanda Rama Murthy

Counsel for Respondent No.1 : Sri Rama Rao Ghanta

Counsel for Respondent No.2 : None

Dated: 20-04-2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 30-01-2006 passed by the learned Single Judge in Writ Petition No.1624 of 2006, whereby he directed Municipal Corporation of Hyderabad (for short 'the Corporation') to decide the representation made by respondent No.2 - M/s Lotus Properties Ltd., keeping in view the Judgment and Decree of the Court of X Junior Civil Judge, City Civil Court, Hyderabad in O.S.No.4553 of 2002 and the fact that the suit filed by the writ petitioner is pending before the Court.

The grievance made by the appellant in the writ petition filed under Article 226 of the Constitution of India was that the authorities of the Corporation have not taken steps to remove the alleged illegal construction raised by respondent No.2. The learned Single Judge noted that suit for perpetual injunction filed by respondent No.2 against the Corporation, which was registered as O.S.No.4553 of 2002 was decreed by X Junior Civil Judge, City Civil Court, Hyderabad, vide judgment dated 17.3.2005 and O.S No.5773 of 2005 filed by the appellant in the same Court in the matter of

illegal construction being raised by respondent No.2 was pending and directed the Corporation to consider representation dated 22-12-2005 made by the appellant and decide the same keeping in view decree dated 17-03-2005 passed in O.S No.4553 of 2005 and the factum of pendency of O.S No. 5773 of 2005 filed by the appellant.

We have heard learned counsel for the appellant. In our opinion, the learned Single Judge would have been fully justified in declining to entertain the appellant's prayer for issuance of a mandamus to the Corporation, Hyderabad to take action for removal of alleged illegal construction made by respondent No.2 because the suit filed by the appellant questioning the alleged illegal construction made by respondent No.2 is pending adjudication before the Civil Court.

In our opinion, the direction given by the learned Single Judge is a benevolent reflection of the exercise of extraordinary jurisdiction by the High Court under Article 226 of the Constitution of India. The appellant should have felt satisfied with the direction given by the learned Single Judge. In any case, we do not find any justification to direct the Corporation to remove the alleged illegal construction raised by respondent No.2 ignoring the injunction granted by X Junior Civil Judge, City Civil Court, Hyderabad in favour of respondent No.2.

For the reasons stated above, the appeal is dismissed.

We would have saddled the appellant with exemplary costs for availing a frivolous litigation but refrain from doing so because the appeal is being dismissed in limine.

As a sequel to the dismissal of the main appeal, W.A.M.P No.873 of 2006 filed for fixing an early date for hearing of the appeal is disposed of as infructuous.

G.S.SINGHVI, CJ

G.BHAVANI PRASAD,J

20-04-2006

ks/vtv